REMARKS

Claims 48-68 are pending in this application. Claim 59 is withdrawn. Claims 48-58 and 60-68 are rejected under 35 U.S.C. § 102(e) for anticipation by Sanberg (U.S. Patent Application Publication No. 2002/002851; hereafter "Sanberg") as evidenced by Rosu-Myles et al. (*Stem Cells* 18:374-381 (2000); hereafter "Rosu-Myles"). By this reply, Applicants amend claims 48, 51, 53-54, 55, 57, 61-63, and 65-67, and address the present rejection.

Support for the Amendment

Support for the amendment to independent claims 48 and 57 is found in the specification at, e.g., page 6, lines 15-23, and Examples 4 and 5 of U.S. Patent No. 5,925,567, the specification of which is incorporated by reference into the present specification (see, e.g., page 3, lines 4-8, and page 10, lines 9-11). Claims 51, 53-54, 55, 61-63, and 65-67 are amended for reasons related to clarity. No new matter is added by the amendment.

Telephonic Interview with Examiner Falk

Applicants and Applicants' representative wish to thank Examiner Falk for the courtesy of a telephonic interview on August 25, 2009. Applicants appreciate the Examiner's acknowledgement that the present claim amendments overcome the § 102 rejection over Sanberg in combination with Rosu-Myles.

Rejoinder

Claim 59 was withdrawn from consideration as a result of Applicants' response to the

Restriction Requirement mailed on December 2, 2008. Upon the allowance of present claims 48-58 and 60-68, Applicants respectfully request reconsideration of the restriction requirement and rejoinder and allowance of withdrawn claim 59 (see M.P.E.P. § 821.04).

Rejection under 35 U.S.C. § 102(e)

Claims 48-58 and 60-68 stand rejected under 35 U.S.C. § 102(e) for anticipation by Sanberg as evidenced by Rosu-Myles for reasons of record. The Office states:

> Applicants allege that Sanberg fails to teach or suggest the use of a substantially pure CD34+/-, Lin- cell population to treat stroke because Sanberg merely discloses the use of a cell composition that includes all mononuclear cells from umbilical cord blood. However, the instant claims merely recite that the cells used are "a substantially pure population of human CD34+/-, Lin- cells from umbilical cord blood" or the use of a selection element…Accordingly, when the claim as a whole is given its broadest reasonable interpretation, it cannot be read as narrowly as Applicants suggest, i.e., that at least 95% of the cells in the population are target cells, and therefore the claim continues to read on the use of the umbilical cord blood mononuclear cells of Sanberg because mononuclear cells other than CD34+/-, Lin- cells are not excluded from the claims.

Applicants have further amended independent claims 48 and 57 to distinguish the cell population of the present claims from that described in Sanberg. As presently amended, claims 48 and 57 recite that the CD34+/-, Lin- cells are "separated from other mononuclear cells" present in umbilical cord blood (UCB) or peripheral blood prior to administration to the human patient.

As discussed in the Reply to Office Action filed on August 28, 2008, Sanberg discloses the use of a cell composition that includes all mononuclear cells from UCB, including, e.g., lineage positive cells, and the use of a cell composition that lacks CD34+ cells (see, e.g., ¶ [0091] on page 10), which are present in the composition administered in the method of present

independent claims 1 and 57, and claims dependent therefrom.[1] Sanberg fails to teach or suggest the administration of CD34+/-, Lin- cells that have been separated from other mononuclear cells present in UCB or peripheral blood, as is recited in the methods of present claims 48-58 and 60-68.

Rosu-Myles, fails to remedy the deficiencies of Sanberg because it also fails to teach or suggest the separation of CD34+/-, Lin- cells from other mononuclear cells in UCB or peripheral or their use for treating stroke. Thus, Sanberg, either alone or in combination with Rosu-Myles, fails to teach or suggest each and every limitation of present claims 48-58 and 60-68.

For all of the reasons given above, Applicants respectfully submit that the rejection of claims 48-58 and 60-68 under 35 U.S.C. § 102(e) for anticipation by Sanberg in light of Rosu-Myles should be withdrawn.

[1] Sandberg's cell composition that lacks CD34+ cells also includes lineage positive cells, which are not present in the composition administered in the method of present claims 48-58 and 60-68.

CONCLUSION

Applicants submit that present claims 48-68 are in condition for allowance, and such action is respectfully requested.

A petition to extend the period for replying for one month, to and including September 4, 2009, is submitted herewith. Applicants authorize the Office to deduct the fee required by 37 C.F.R. § 1.17(a) for the petition from Deposit Account No. 03-2095.

If there are any other charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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Date: 25 August 2009

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